Supreme Court, U.S.
FILED
NOV 1 2000
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No. 99-1408

In the
Supreme Court of the United States

GAIL ATWATER, *ET AL.*,
Petitioners,

v.

CITY OF LAGO VISTA, *ET AL.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

AMICUS CURIAE BRIEF OF THE TEXAS POLICE CHIEFS ASSOCIATION

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AMICUS CURIAE BRIEF OF THE TEXAS POLICE CHIEFS ASSOCIATION

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Amicus Curiae Texas Police Chiefs Association ("TPCA")[1] submits the following in further support of Respondents' assertion that the judgment of the Court of Appeals should be affirmed.

[1] No outside source has paid, or will be paid, any fee for preparation of this brief of *amicus curiae*. The writer is General Counsel of and for the *amicus curiae* Texas Police Chiefs Association. *See* SUP. CT. R. 37.6.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Texas Police Chiefs Association ("TPCA") represents more than six hundred police chiefs in the State of Texas. Police chiefs are responsible for the hiring and training of police officers, as well as establishing policy for their respective departments. Because of these responsibilities, as an organization we have a vested interest in court rulings as well as statutory law.

Due to the nature of police work, an officer has traditionally been given broad discretion in a number of areas. One of the most important is the discretion to arrest an individual or not, given probable cause to arrest. As such, the constitutional requirements of all arrests must be governed by clear and consistent requirements. TPCA is concerned and opposed to the alteration of the current and long-standing probable cause standards for arrest. TPCA requests that the judgment of the Court of Appeals be affirmed.

The Texas Police Chiefs Association respectfully moves for leave to file the attached Brief Amicus Curiae in this case.

The parties have given their consent to the filing of this brief through a blanket letter of consent filed with this Court on September 12, 2000. *See* SUP. CT. R. 37.2 (a).

SUMMARY OF THE ARGUMENT

Arrests in Texas are governed by Texas statutory law, the Texas Constitution, and the United States Constitution. The purpose of this brief is to ensure that the constitutionality of Texas arrests continue to be evaluated in a manner consistent with precedence, and constitutional requirements.

On March 26, 1997, a Texas police officer witnessed a woman committing five misdemeanor traffic offenses. Each offense allowed for the offender's arrest on the day in question. On March 26, 1997, Officer Turek arrested Petitioner Atwater for four misdemeanor offenses. She appeared before a magistrate and was released.

Texas law authorizes the arrest of offenders like Petitioner Atwater. The statutes do not limit arrests to only breaches of the peace. Petitioners do not challenge the constitutionality of the relevant statutes. Nonetheless, Petitioners complain that the arrest was unreasonable.

Clearly, under Texas law, the officer had probable cause to arrest, as he witnessed the offenses. Petitioners ask this Court to declare the arrest unconstitutional, despite undisputed probable cause. Probable cause has always been the test for ensuring that public arrests are reasonable. This requirement is reflected in precedent from this Court. The probable cause test fairly balances individual needs against state and public needs. The United States Constitution does not require courts to subjectively or objectively evaluate the merits of each and every arrest in order to determine reasonableness. Instead, every arrest requires probable cause. When a public arrest is made with probable cause, it is reasonable. When Petitioners fail to deny that the officer had probable cause to arrest her, they admit that Ms. Atwater's arrest was reasonable.

Petitioners want this Court to require more than probable cause to justify the arrest, when probable cause has always authorized a public arrest. Officer Turek's conduct was in compliance with clearly established law.

ARGUMENT

I. TEXAS TRAFFIC AND ARREST LAWS ARE CONSTITUTIONAL.

Texas law governs vehicle operation and the enforcement of vehicle operation requirements. Texas law requires that operators use seatbelts, and carry proof of their driver's license and financial responsibility, when they are operating a vehicle. TEX. TRANSP. CODE ANN. §545.413(a),§521.025 and §601, *et seq.* (Vernon's 1999). The constitutionality of these provisions is not disputed.

Texas law also governs the enforcement of these traffic regulations. An officer can arrest most misdemeanor offenders without a warrant if the offense is committed in the officer's presence or view. TEX. CODE CRIM. PROC. ANN. art. 14.01(b)(Vernon's 1997). In addition, Chapter 543 of the Texas Transportation Code governs the arrest and charging procedures for certain traffic violations, including violation of the safety belt provisions. The constitutionality of these laws is uncontested.

Officer Turek elected to arrest Petitioner Atwater after witnessing the commission of five misdemeanor offenses. Petitioners do not dispute that Officer Turek complied with the Texas statutes. Despite Petitioners' argument, the arrest was reasonable.

II. ARREST STANDARDS SHOULD BE CONSISTENTLY APPLIED.

Petitioners argue that the probable cause arrest of Gail Atwater was unreasonable under the Fourth Amendment to the United States Constitution. The Constitution requires that

all arrests be reasonable. U.S. CONST. amend. IV. It is well-settled that a public arrest is reasonable if it is made with probable cause. *United States v. Robinson*, 414 U.S. 218, 235 (1973); *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979); *Dunaway v. New York*, 442 U.S. 200, 208 (1979); *Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967).

The Fifth Circuit has consistently limited its evaluation of misdemeanor arrests to the issue of probable cause. *United States v. Thomas*, 120 F.3d 564, 573 (5th Cir.1997), *cert. denied*, 118 S.Ct. 721 (1998); *United States v. Basey*, 816 F.2d 980, 990-91 (5th Cir. 1987); *Sorenson v. Ferrie*, 134 F.3d 325, 328 (5th Cir. 1998); *Mangieri v. Clifton*, 29 F.3d 1012 (5th Cir. 1994); *Fields v. City of S. Houston*, 922 F.2d 1183 (5th Cir. 1991). This standard is also well-settled in Texas courts. *See, e.g., Bruno v. Texas*, 922 S.W.2d 292 (Tex. App.—Amarillo 1996, no writ); *Myles v. Texas*, 946 S.W.2d 630 (Tex. App.—Houst. [14th Dist.] 1997, no writ); *Madison v. State*, 922 S.W.2d 610 (Tex. App.—Texarkana 1996, writ ref'd).

The probable cause standard for public arrests has been the touchstone of federal and state law for over a century. Petitioners provide no basis in the Constitution, statutory law, or in policy for altering this consistently applied principle of constitutional law. Officer Turek had probable cause to arrest Petitioner Atwater. An arrest made with probable cause is a reasonable arrest. As a result, Petitioner Atwater's arrest was reasonable.

III. Probable Cause Is the Requirement for All Arrests.

Petitioners ask this Court to look beyond probable cause to determine the reasonableness of the public arrest. The probable cause test already balances the interests between the state and the individual. *Brinegar v. United States*, 338 U.S. 160, 176 (1949); *Gerstein v. Pugh*, 420 U.S.103, 112 (1975). This Court selected the probable cause test to specifically avoid the need to perform a case-by-case evaluation of the facts and circumstances that arise in the context of each and every arrest. *Dunaway v. New York*, 442 U.S. 200, 208 (1979); *Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967).

Despite these precedents, Petitioners ask this Court to look beyond probable cause. Petitioners urge this Court to perform the case-by-case analysis expressly rejected in *Dunaway*. 442 U.S. at 208; *see also Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967).

Like Petitioners, other claimants have expressly asked courts to consider factors, besides probable cause, to evaluate their arrests. Federal and state courts have rejected consideration of (a) the seriousness of the offense or punishment;[2] (b) whether issuance of citation is an option;[3] (c)

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[2] *Ricci v. Arlington Heights*, 116 F.3d 288, 290-91 (7th Cir. 1997), *cert. dismissed*, 523 U.S. 613 (1998); *Fisher v. WMATA*, 690 F.2d 1133, 1139 (4th Cir. 1982); *Illinois v. Ramirez*, 618 N.E.2d 638 (Ill. App. Ct. 1993).

[3] *Moore v. Gwinnett County*, 967 F.2d 1495 (11th Cir. 1992), *cert. denied*, 506 U.S.1081 (1993); *Higbee v. City of San Diego*, 911 F.2d 377,379 (9th Cir. 1990); *Ramirez*, 618 N.E.2d at 638.

if state law was complied with;[4] (d) the peace officer's subjective intent;[5] (e) whether other officers would have made the arrest;[6] or (f) if the arrest complied with usual police department policies or practices.[7] In each of these cases, the court concluded that probable cause alone established the reasonableness of the public arrest.

The probable cause requirement provides officers and individuals with a bright line standard. It clearly sets out what is required to satisfy the constitutional requirements for an arrest. Probable cause is established when the officer has reason to believe that the suspect committed or is committing a criminal offense. Once the officer has probable cause, the decision to arrest is left to his or her discretion. The officer is entitled to exercise this discretion without concern that a

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[4] *See Fields v. City of S. Houston*, 922 F.2d 1183 (5th Cir. 1991); *Vargas-Badillo v. Diaz-Torres*, 114 F.3d 3 (1st Cir 1997); *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995); *Barry v. Fowler*, 902 F.2d 770, 772-73 (9th Cir. 1990); *Street v. Surdyka*, 492 F.2d 368, 371-72 (4th Cir. 1974). In each of these cases, the court concluded that probable cause justified the warrantless arrests, despite the violation of state laws and early common law that restricted the arrest of misdemeanor offenders to only offenses that were committed in the officer's presence.

[5] *Whren v. United States*, 517 U.S. 806, 813 (1996); *Basey*, 816 F.2d at 990-91; *Holland v. City of Portland*, 102 F.3d 6 (1st Cir. 1996).

[6] *Whren*, 517 U.S. at 813-4; *Moore*, 967 F.2d at 1498.

[7] *United States of America v. Trigg*, 878 F.2d 1037, 1041 (7th Cir. 1989), *cert. denied*, 502 U.S. 963 (1991).

claimant will ask the court to second-guess the determination that was made at the scene of the arrest.

An arrest made with probable cause is a reasonable arrest. Petitioners' attempt to compel this Court to diverge from its own directives should be rejected.

IV. THE OLD ENGLISH ARREST STANDARD HAS NOT BEEN ADOPTED.

Petitioners also complain that the arrest was unreasonable because it did not satisfy the Old English common law standard for arrests. As Petitioner notes, in early England, arrest was permitted without a warrant if the offense constituted a felony, or if it was a breach of peace that was committed in the officer's presence.

The above misdemeanor arrest standard has never been adopted by the Court. This requirement was ignored by the Court as part of the standard for public arrests. *See United States v. Watson,* 423 U.S. at 418. It was ignored in the proposed Model Code of Pre-Arraignment Procedure, which the Court relied on in *Watson. Id.*; MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE §120.1. It has been ignored in state and federal statutory law. *See, e.g.*,18 U.S.C.A. § 3052 (since 1951, allowing F.B.I. agents to arrest without requiring a breach of the peace); TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (since 1967, allowing Texas peace officers to arrest without requiring breach of peace).

Moreover, the "presence" component of the common law standard has already been expressly rejected as a constitutional requirement, by a number of Circuits. *See Fields v. City of S. Houston*, 922 F.2d 1183 (5th Cir. 1991);

Vargas-Badillo v. Diaz-Torres, 114 F.3d 3 (1st Cir 1997); *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995); *Barry v. Fowler*, 902 F.2d 770, 772-73 (9th Cir. 1990); *Street v. Surdyka*, 492 F.2d 368, 371-72 (4th Cir. 1974). As noted in *Street,* the Court has never given constitutional force to the presence requirement of the common law rule, but has instead relied on the existence of probable cause. 492 F.2d at 371-72.

Petitioners' reliance on the Old English rule in order to establish that the arrest was unreasonable is without justification. Petitioner Atwater's arrest was reasonable, because, in accordance with long-standing law, Officer Turek had probable cause.

V. CONSTITUTIONAL LEGISLATIVE INTENT SHOULD CONTROL.

It is undisputed that Petitioner Atwater violated numerous traffic restrictions. The Texas Legislature designated these traffic offenses as "misdemeanor" offenses. In addition, it provided for the enforcement of these statutes by custodial arrest. Petitioners do not challenge the constitutionality of these Texas traffic laws. Nonetheless, Petitioners ask this Court to override the constitutional directives of the Texas Legislature.

It is uniquely within the Legislature's charge to determine what conduct constitutes criminal conduct, and what conduct can be enforced by custodial arrest. As a matter of public policy, the Texas Legislature has determined that officers should have discretion to make the custodial arrest of most traffic offenders. Texas law, however, does not permit the custodial arrest of all traffic offenders. For example, it has removed the officer's discretion to arrest certain speed limit

violators. *See* TEX. TRANSP. CODE Ch. 543. In the 76th Legislative Session ending in 1999, the Texas House of Representatives addressed the issue of arresting traffic offenders. Failed House Bill 789 attempted to substantially restrict an officer's discretion to arrest.

It is anticipated that the 77th Texas Legislature will again address the issue of traffic arrests. Thus the citizens of Texas through their state representatives are able to decide what violations constitute arrestable offenses.

As long as the officer has probable cause to publicly arrest the offender, the individual's constitutional rights are preserved. Officer Turek had probable cause to arrest Petitioner Atwater, as a result, her arrest was reasonable as a matter of law.

VI. PUBLIC POLICY.

Some *amici* have suggested that it is against public policy to waste local resources on the arrest of traffic offenders. The use of local tax dollars to support public safety and how those dollars are best utilized is not a constitutional question. It is a question for local elected officials to decide what they think is the appropriate amount of funds to be expended to best insure the safety of the general public. They charge police chiefs and other law enforcement administrators with the task of carrying out this policy. Citizens through the election process can determine policies. Citizens can also use cities and police departments' complaint procedures for instituting change at the local level.

Amici also suggest that Texas seat belt law is not unlike a violation of failure to signal lane change. Unseatbelted

drivers are at risk not only to themselves in accidents or in the avoidance of an accident but due to the loss of vehicle control become a danger to others. Unseatbelted children are at an even greater risk and, in fact, can distract the driver from paying full attention to accident avoidance.

CONCLUSION

Law enforcement officers and the public are entitled to clear and consistent application of the law. Federal courts continuously endeavor to satisfy this demand. All arrests must be constitutionally reasonable. The reasonableness standard for public arrests is probable cause. The probable cause test objectively evaluates the peace officer's determination that a crime had been or was being committed. Once that standard is met, the officer is entitled to make a public arrest, and proceed with ordinary processing.

This standard balances the needs of the individual with those of the state and public, without requiring a case-by-case analysis of each and every arrest. This Court has consistently upheld public arrests that were made with probable cause. Every Circuit that addressed the issue has rejected application of an additional balancing test. Moreover, the breach of peace standard never was adopted as a constitutional standard.

Officer Turek had probable cause to arrest Petitioner Atwater. Her arrest complied with all constitutional requirements. As a result, the judgment of the Fifth Circuit should be affirmed.

Respectfully submitted,

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